

## § 2.105

## 28 CFR Ch. I (7–1–01 Edition)

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

### § 2.105 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

(i) Reprimand the parolee;

(ii) Modify the parolee's conditions of release; or

(iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine whether immediate reparole is warranted or whether parole should

be terminated pursuant to D.C. Code 24–206(a). Termination of parole shall return the parolee to prison. If the parolee is returned to prison, the Commission shall also determine a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The Commission's decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(d) Pursuant to D.C. Code 24–206(a), a parolee whose parole is revoked by the Commission shall receive no credit toward his sentence for time spent on parole, including any time the parolee may have spent in confinement on other sentences (or in a halfway house as a condition of parole) prior to the execution of the Commission's warrant.

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). This exception from D.C. Code 24–206(a) does not apply to prisoners serving sentences under the D.C. Youth Rehabilitation Act, to which D.C. Code 24–206(a) is fully applicable.

(f) In determining whether to revoke parole for non-compliance with a condition requiring payment of a fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

### § 2.106 Youth Rehabilitation Act.

(a) Regulations governing YRA offenders and D.C. Code FYCA offenders. The provisions of this section shall

apply to offenders sentenced pursuant to the Youth Rehabilitation Act of 1985 (D.C. Code 24-801 *et seq.*) (YRA), and to D.C. Code offenders sentenced under the former Federal Youth Corrections Act (former 18 U.S.C. 5005 *et seq.*) (FYCA).

(b) Application of this subpart to YRA offenders. All provisions of this subpart that apply to adult offenders also apply to YRA offenders unless a specific exception is made for YRA (or youth) offenders. The specific exceptions for YRA offenders, apart from this section, are found in §2.71(b) (timing of initial parole hearings), §2.75(b) (timing of reconsideration hearings), §2.80(i) (guidelines for decisions at initial hearings), and §2.80(l) (guidelines for decisions at subsequent hearings).

(c) No further benefit finding. If there is a finding that a YRA offender will derive no further benefit from treatment, such prisoner shall be considered for parole, and for any other action, exclusively under the provisions of this subpart that are applicable to adult offenders. Such a finding may be made pursuant to D.C. Code 24-805 by the Department of Corrections or by the Bureau of Prisons, and shall be promptly forwarded to the Commission. However, if the finding is appealed to the sentencing judge, the prisoner will continue to be treated under the provisions pertaining to YRA offenders until the judge makes a final decision denying the appeal.

(d) Program plans. At a YRA prisoner's initial parole hearing, a program plan for the prisoner's treatment shall be submitted by institutional staff and reviewed by the hearing examiner. Any proposed modifications to the plan shall be discussed at the hearing, although further relevant information may be presented and considered after the hearing. The plan shall adequately account for the risk implications of the prisoner's current offense and criminal history and shall address the prisoner's need for rehabilitational training. The program plan shall also include an estimated date of completion. The criteria at §2.64(d) for successful response to treatment programs shall be considered by the Commission in determining whether the proposed program plan

would effectively reduce the risk to the public welfare.

(e) Parole violators. A YRA parolee who has had his parole revoked shall be scheduled for a rehearing within six months of the revocation hearing to review the new program plan prepared by institutional staff, unless a parole effective date is granted after the revocation hearing. Such program plan shall reflect a thorough reassessment of the prisoner's rehabilitational needs in light of the prisoner's failure on parole. Decisions on reparole shall be made using the guidelines at §2.80. If a YRA parolee is sentenced to a new prison term of one year or more for a crime committed while on parole, the case shall be referred to correctional authorities for consideration of a "no further benefit" finding.

(f) Unconditional Discharge From Supervision. (1) A YRA parolee may be unconditionally discharged from supervision after service of one year on parole supervision if the Commission finds that supervision is no longer needed to protect the public safety. A review of the parolee's file shall be conducted after the conclusion of each year of supervision upon receipt of an annual progress report, and upon receipt of a final report to be submitted by the supervision officer six months prior to the sentence expiration date.

(2) In making a decision concerning unconditional discharge, the Commission shall consider the facts and circumstances of each case, focusing on the risk the parolee poses to the public and the benefit he may obtain from further supervision. The decision shall be made after an analysis of case-specific factors, including, but not limited to, the parolee's prior criminal history, the offense behavior that led to his conviction, record of drug or alcohol dependence, employment history, stability of residence and family relationships, and the number and nature of any incidents while under supervision (including new arrests, alleged parole violations, and criminal investigations).

(3) An order of unconditional discharge from supervision terminates the YRA offender's sentence. Whenever a

YRA offender is unconditionally discharged from supervision, the Commission shall issue a certificate setting aside the offender's conviction. If the YRA offender is not unconditionally discharged from supervision prior to the expiration of his sentence, a certificate setting aside the conviction may be issued nunc pro tunc if the Commission finds that the failure to issue the decision on time was due to administrative delay or error, or that the Supervision Officer failed to present the Commission with a progress report before the end of the supervision term, and the offender's own actions did not contribute to the absence of the final report. However, the offender must have deserved to be unconditionally discharged from supervision before the end of his supervision term for a nunc pro tunc certificate to issue.

**§2.107 Interstate Compact.**

(a) Pursuant to D.C. Code 24-1233(b)(2)(G), the Director of the Court Services and Offender Supervision Agency (CSOSA), or his designee, shall be the Compact Administrator with regard to the following individuals on parole supervision pursuant to the Interstate Parole and Probation Compact authorized by D.C. Code 24-251:

(1) All D.C. Code parolees who are under the supervision of agencies in jurisdictions outside the District of Columbia; and

(2) All parolees from other jurisdictions who are under the supervision of CSOSA within the District of Columbia.

(b) Transfers of supervision pursuant to the Interstate Compact, where appropriate, may be arranged by the Compact Administrator, or his designee, and carried out with the approval of the Parole Commission. A D.C. Code parolee who is under the Parole Commission's jurisdiction will ordinarily be released or transferred to the supervision of a U.S. Probation Office outside the District of Columbia.

(c) Upon receipt of a report that a D.C. Code parolee, who is under supervision pursuant to the Interstate Compact in a jurisdiction outside the District of Columbia, has violated his or her parole, the Commission may issue

a warrant pursuant to the procedures of §2.98. The warrant may be executed as provided as in §2.99. A parolee who is arrested on such a warrant shall be considered to be a prisoner in federal custody, and may be returned to the District of Columbia or designated to a facility of the Bureau of Prisons at the request of the Commission.

(d) If a parolee from another jurisdiction, who is under the supervision of CSOSA pursuant to the Interstate Compact, is alleged to have violated his or her parole, the Compact Administrator or his designee may issue a temporary warrant to secure the arrest of the parolee pending issuance of a warrant by the original paroling agency. If so requested, the Commission will conduct a courtesy revocation hearing on behalf of the original paroling agency whenever a revocation hearing within the District of Columbia is required.

(e) The term "D.C. Code parolee" shall include any felony offender who is serving a period of parole or mandatory release supervision pursuant to a sentence of imprisonment imposed under the District of Columbia Code.

**Subpart D—District of Columbia Code Supervised Releasees**

SOURCE: 65 FR 70467, Nov. 24, 2000, unless otherwise noted.

**§2.200 Authority, jurisdiction, and functions of the U.S. Parole Commission with respect to offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia.**

(a) The U.S. Parole Commission has jurisdiction, pursuant to D.C. Code 24-1233(c)(2), over all offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia under the Sentencing Reform Amendment Act of 2000.

(b) The U.S. Parole Commission shall have and exercise the same authority with respect to a term of supervised release as is vested in the United States district courts by 18 U.S.C. 3583(d) through(i), except that:

(1) The procedures followed by the Commission in exercising that authority shall be those set forth with respect